



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2009

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Doug Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

Maria R. Nold  
Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - SPECIAL ORDER BY CONSENT ISSUED TO THE CITY OF NEWPORT NEWS FOR SIGNIFICANT ALTERATION TO WETLANDS**

### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and § 62.1-44.15(8d), between the State Water Control Board and the City of Newport News, regarding significant alteration to wetlands located at 12971 Jefferson Avenue, Newport News, VA, Parcel ID #065000119, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "City" means the City of Newport News a political subdivision of the Commonwealth of Virginia. The City is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "Compensation" or "Compensatory Mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
7. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
8. "Hydrologic Unit Code" means the water shed name and 8-digit number that designates a water classification system developed by the United States Geological Survey.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a Consent Special Order.
11. "Pollutant" means any substance, radioactive material, or heat which cause or contributes to, or may cause or contribute to pollution.
12. "Property" means the approximately 37 acre undeveloped property located at the corner of Industrial Park Drive and Jefferson Avenue, originally a part of a 42.7 parcel known as 12971 Jefferson Avenue, Newport News. The Property was identified as City of Newport News Parcel ID #065000119. The City acquired the 37 acre parcel subsequent to the Notice of Violation of July 22, 2010, as more fully described in Section C, paragraph 8 below.
13. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed.
14. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions.
15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. 9 VAC 25-210-10.
16. "Surface water" means all state waters that are not ground waters as defined in § 62.1-255 of the Code of Virginia.

17. "USACE" means the U.S. Army Corps of Engineers.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "Virginia Water Protection permit" or "VWP permit" means an individual or general permit issued by authority of the Board under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344).
21. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. The Property contains uplands and approximately 37.4 acres of nontidal forested wetlands, a surface water, which has a significant nexus to an unnamed tributary to Stony Run, a tributary to the Warwick River, James River, Hampton Roads Harbor, and the Chesapeake Bay, all considered surface waters under Va. Code § 62.1-255.
2. On May 20, 2005, a Federal Consent Decree with the United States District Court for the Eastern District of Virginia (Civil Action N. 2:01CV508) ("the Consent Decree") required restoration and monitoring to approximately 25.7 acres of nontidal forested wetlands on the Property. Among other things, the Federal Consent Decree required monitoring of the Property to ascertain the success of the restoration for 10 years, and not to mow or cut the wetlands.
3. On July 23, 2010, DEQ staff conducted a site visit of the Property in response to information from the USACE that mowing of the Property may have taken place. DEQ staff observed that approximately 13.7 acres of the 25.7 acres of wetlands under restoration and monitoring had been mowed; emergent and scrub-shrub wetland restoration vegetation, as well as immature trees, had been mowed to a height of 2-4 inches above the ground surface resulting in significant alteration or degradation of existing wetland acreage or functions. Also, monitoring wells in the restoration area had been damaged as a result of the mowing. At the time of mowing, the Property was in the 5<sup>th</sup> year of the required 10 year restoration and monitoring schedule.
4. Despite correspondence between the Property owner and the City noting that the Property was subject to a Federal Consent Decree for restoration activities, a City of Newport News work crew, in response to citizen complaints of tall vegetation,

proceeded to mow the Property.

5. Va. Code § 62.1-44.15:20 states that except in compliance with VWP permit, it is unlawful to cause significant alteration or degradation of existing wetland acreage or functions. Similarly, 9 VAC 25-210-50 (A) states that except in compliance with a permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical, or biological properties of surface waters, including wetlands.
6. On August 23, 2010, DEQ issued NOV No. W2010-08-T-001 for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 (A).
7. In a meeting on August 12, 2010 with DEQ, City, and USACE, the City accepted responsibility for the mowing of the Property indicating that there had been a failure of internal communications between City departments that the Property was not to be mowed.
8. The City reported that on January 5, 2012 it has agreed to assume the Property owner's primary responsibilities for restoration and monitoring of the wetlands under the Consent Decree, as per an agreement (Appendix A) between the Property owner and the City for the purchase of the Property subject to the Consent Decree. The City also reported that the USACE will concur in this acceptance, but that Property owner will not be released until such time of the ten year period in the Consent Decree comes to an end (approximately 2015).
9. On February 22, 2012, Property owner deeded the Property to the City (Appendix B), which amounted to 37 acres of the original 42.7 acre tract. This deed ("Deed") was recorded as Instrument No. 120003412 in the Office of the Clerk of the Circuit Court of the City of Newport News on March 1, 2012. The 25.7 acres subject to the Consent Decree is incorporated within the 37 acre tract described in the Deed.
10. On March 31, 2012, the City subjected five acres of forested wetlands located at 13141 Jefferson Avenue, Newport News, VA to a Declaration of Restrictions as shown on attached Appendix C, in perpetuity, as compensation for functional losses due to the mowing. The five acres of forested wetlands are in the same Hydrological Unit Code as the Property. The Declaration of Restrictions has been submitted for recording to the City of Newport News Clerk of Circuit Court.
11. Based on the above observations, the Board concludes that the City of Newport News has violated Va. Code § 62.1-44.15:20, and 9 VAC 25-210-50(A) for the the significant alteration and degradation of existing wetland acreage and functions to the Property.
12. In order for the City of Newport News to return to compliance, DEQ staff and representatives of the City of Newport News have agreed to the Schedule of Compliance, which is incorporated as the Appendix of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15(8a) and (8d), the Board orders the City of Newport News, and the City of Newport News agrees to:

1. Perform the actions described in the Appendix D of this Order;
2. Pay a civil charge of \$12,500.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order;
3. Maintain primary responsibilities for restoration and monitoring of the wetlands for 5 years after the original termination under the Consent Decree in 2015, until 2020).

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The City of Newport News shall include its Federal Employer Identification Number (FEIN) 54-6022059 with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the City of Newport News for good cause shown by the City of Newport News, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order, the City of Newport News admits the jurisdictional allegations and agrees not to contest, but does not admit, the findings of fact, and conclusions of law contained herein.

4. The City of Newport News consents to venue in the Circuit Court of the City of Newport News for any civil action taken to enforce the terms of this Order.
5. The City of Newport News declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by the City of Newport News to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The City of Newport News shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The City of Newport News shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. The City of Newport News shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility

of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee, and the City of Newport News. Notwithstanding the foregoing, the City of Newport News agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - (a) the Director or his designee terminates the Order after the City of Newport News has completed all of the requirements of the Order;
  - (b) the City of Newport News petitions the Director or his designee to terminate the Order after it has complete all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - (c) the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the City of Newport News.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the City of Newport News from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the City of Newport News and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of the City of Newport News certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the City of Newport News to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the City of Newport News.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By his signature below, the City of Newport News voluntarily agrees to the issuance of this Order.

15. By his signature below, the City of Newport News voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 25 day of June, 2012.

*Janice D. Doll*  
Regional Director  
Department of Environmental Quality

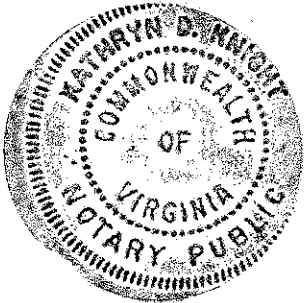
The City of Newport News voluntarily agrees to the issuance of this Order.

Date: 4/10/12

By: *Neil A. Morgan*  
City Manager

Commonwealth of Virginia  
City of Newport News

The foregoing document was signed and acknowledged before me this 10th day of April, 2012 by Neil A. Morgan, City Manager, City of Newport News.



*Kathryn D. Knight*  
Notary Public  
207439  
Registration No.

My commission expires: 11-30-2012

Approved as to form:

*[Signature]*  
Deputy City Attorney



**APPENDIX A – REAL ESTATE PURCHASE AGREEMENT BETWEEN NEWDUNN ASSOCIATES, L.L.C. AND THE CITY OF NEWPORT NEWS**

**APPENDIX B – DEED**

**APPENDIX C – DECLARATION OF RESTRICTIONS,**

**APPENDIX D**

The City of Newport News shall:

1. Within 60 days of the effective date of this Order, submit to DEQ an approvable Corrective Action Plan (CAP) to restore the 13.7 acres of wetlands at the Property that were mowed;
2. Upon DEQ approval of the CAP, The City of Newport News shall implement the CAP within 30 days in accordance with the schedule contained therein. Any changes to the approved Final CAP or schedule shall not be initiated without advance notice to and approval by DEQ. The City of Newport News shall complete the CAP in accordance with its terms. Any modifications to the DEQ approved CAP that become necessary shall be submitted to DEQ for approval. The modified CAP shall be implemented within 30 days following DEQ approval.
3. Restore the 13.7 acres of wetlands of the Property to a success criterion of no less than 400 woody stems per acre average after the second and third growing seasons. The mortality of planted stock will be estimated in each required report. Survivorship of woody vegetation planted stock will only count toward the success criteria if it has survived onsite a minimum of 6 months. Remedial planting will be required if a minimum average woody stem count of 400 per acre is not achieved in the sample plots across the site in any monitoring year until the canopy cover is thirty percent or greater. In the event that remedial planting is required, species which experienced high mortality in the initial planting will not be used;
4. Restoration shall include the approximately 13.7 acres of forested wetlands impacts as described in sections C.3. of this Order. The CAP must meet the requirements to achieve no net loss of existing wetland acreage and functions in accordance with 9 VAC 25-210-116. The City of Newport News shall respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days;
  - a. If the performance criteria specified in the Final CAP are not achieved at the end of the applicable monitoring period, then The City of Newport News shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, The City of Newport News shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved

alternative CAP shall then be implemented by The City of Newport News in accordance with the schedule set forth in the alternative CAP.

- b. If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then The City of Newport News shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or, as applicable, any previously submitted alternate CAP. The City of Newport News shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. The City of Newport News shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.
5. Within 30 days of the effective date of this Order, provide DEQ the procedures that the City has implemented to prevent mowing of wetland restoration sites in the City;
6. Mail all submittals and reports required by this Order and Appendix to:

Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Boulevard  
Virginia Beach, VA 23462

**REAL ESTATE PURCHASE AGREEMENT**

**THIS AGREEMENT** ("Agreement"), made this 5<sup>th</sup> day of January, 2012, by and between **NEWDUNN ASSOCIATES, L.L.P.**, a Virginia Limited Liability Partnership(Tax I.D. # 54-1075337)( "**NEWDUNN**" ), and the **CITY OF NEWPORT NEWS, VIRGINIA**, a Virginia municipal corporation (Tax I.D.# 54-6022059) ("**CITY**").

**WHEREAS**, **NEWDUNN** is the owner of 12971 Jefferson Avenue in the City of Newport News, Virginia, Tax Id. No. 065000119, which encompasses 42.72 Acres, more or less; and

**WHEREAS**, **CITY** desires to acquire 37 acres, more or less, of the property aforesaid, as shown as Parcel D on that certain subdivision plat entitled "Subdivision Plat Newdunn Associates, L.L.P. (recorded Deed Book 945, Pg.78) made by Hoggard-Eure Associates, P.C.", dated October 5, 2011 (the "Plat"), a copy of which is attached herewith as Exhibit A (" Parcel D"), and which exhibit is incorporated herein by reference, for the following purposes:

- 1) to provide right-of-way, utility, drainage, stormwater management and other components for the construction of Atkinson Boulevard which will, when constructed, traverse Parcel D;
- 2) to further the City's Stormwater Management Program in connection with regulatory activity of the United States Environmental Protection Agency (the "EPA"), the Virginia Department of Conservation and Recreation, and other regulatory agencies; and
- 3) to address issues raised by the Virginia Department of Environmental Quality (the "DEQ") the U.S. Army Corps of Engineers, and other regulatory agencies, requiring the City to remediate, restore and mitigate certain wetland areas within the City.

**NOW, THEREFORE, WITNESSETH:**

In consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

1. Agreement to convey, buy and sell. NEWDUNN hereby agrees to convey and sell, and CITY agrees to buy Parcel D.
2. Purchase price. The purchase price of Parcel D shall be the sum of Nine Hundred Fifty Thousand Dollars (\$950,000.00). The purchase price is to be paid in three installments of Three Hundred Sixteen Thousand, Six Hundred Sixty-Six and 67/100 Dollars (\$316,666.67). The first installment is due at settlement, and the remaining two on the first and second anniversary of the settlement date.
3. Settlement. Settlement shall be held at the office of the City Attorney, 2400 Washington Avenue, 9<sup>th</sup> Floor, Newport News, Virginia, 23607. Title to Parcel D shall be conveyed by General Warranty Deed, free and clear of all liens and encumbrances and subject only to utility easements duly of record as of the settlement and constituting constructive notice. Closing shall take place at a mutually agreeable time, not to exceed ninety (90) days after execution by the parties of the Agreement.
4. Possessory rights. From and after the date of execution of the Agreement, CITY, its agents, employees and assigns shall have the right, at its sole cost and expense, to enter upon Parcel D for the purpose of making surveys, engineering studies, environmental studies (including both land and improvements) and soil tests and borings (hereinafter collectively referred to as "Studies"), provided that CITY reimburses NEWDUNN with respect to any loss, damage or personal injury incurred by the other, resulting directly or indirectly from the negligence of CITY, its agents, employees or assigns. If CITY, in its reasonable discretion, determines that the condition of the property it wishes to buy is unsatisfactory for the purposes of the acquisition,

CITY shall have the option (a) to terminate the Agreement by written notice to NEWDUNN, or (b) to waive such objection and proceed to settlement, or (c) to give written notice to NEWDUNN of its findings and provide a list of items that need to be repaired, corrected or remediated as a condition of settlement. In the event that CITY provides such a list to NEWDUNN, it shall have the option of taking the actions requested by CITY or, in the alternative, terminate the contract without liability.

5. Risk of loss. The risk of loss or damage to Parcel D by fire or other casualty (other than loss or damage resulting from making the Studies, which shall be the responsibility of the party conducting the Studies), shall remain with NEWDUNN until the deed of conveyance is delivered.

6. Agent and broker's commission. CITY and NEWDUNN warrant and represent that they have not engaged the services of, and are not obligated to, a real estate broker or agent for any commission relating to the sale of Parcel D.

7. Settlement costs and documents. CITY will prepare the deed of conveyance for Parcel D at no cost to NEWDUNN. NEWDUNN will pay all grantors taxes, prorated real estate taxes, if any, and will pay their own attorney's fees. CITY will pay its own attorney's fees and any other costs of recording the deed of conveyance. CITY will also prepare a settlement statement for the property to be sold and will provide the settlement statement to NEWDUNN for their review prior to the settlement date. NEWDUNN will prepare and provide at settlement a fully executed owner/seller affidavit in a form acceptable to CITY.

8. Representations and warranties. NEWDUNN represents and warrants to CITY, both as of the date of the Agreement and the closing date (unless otherwise indicated), as to the property they are selling, as follows:

a. There are no pending condemnation proceedings or eminent domain proceedings

- against the property to be sold and NEWDUNN has no knowledge of any threatened condemnation proceedings, other than those known to the City.
- b. To NEWDUNN's knowledge there are no violations of laws, ordinances, rules or regulations of any governmental authority having jurisdiction over the property to be sold and NEWDUNN has received no notices thereof, with the exception of the issues addressed in Paragraph 9 below.
  - c. The signatory executing the Agreement on behalf of NEWDUNN has authority to execute the Agreement on NEWDUNN's behalf.
  - d. To the best of NEWDUNN's knowledge, NEWDUNN is in compliance in all respects with all applicable federal, state and local laws (collectively the "Laws") including, without limitation, those related to toxic hazardous substances and other environmental matters (except as provided below in paragraph 9), and, that no portion of the property it is selling is being used or has been used at any previous time for the disposal, storage, treatment, processing or other handling of hazardous or toxic substances.
  - e. That the execution and delivery of the Agreement and the consummation of the transaction as herein contemplated, in compliance with the terms of the Agreement, shall not conflict with, or result in any breach of any of the terms or provisions of, or constitute default under, any instrument or agreement to which NEWDUNN is a party or by which any of Parcel D is or may be bound, or any applicable regulations of any governmental agency, or any judgment, order or decree of any court having jurisdiction over NEWDUNN or its respective properties, except as provided below in paragraph 9.
  - f. NEWDUNN will own fee simple title to Parcel D it is selling on the date of closing.

- g. This agreement is, and the other settlement documents shall be at the time of their execution and delivery, legal, valid and binding obligations of NEWDUNN and CITY and at the settlement shall be sufficient to convey title.
  - h. There are no leases, licenses, or agreements, oral or written, now in effect with respect to Parcel D, except as provided below in paragraph 9.
  - i. There are no liens for delinquent real estate taxes and stormwater fees presently against Parcel D and all real estate taxes and stormwater fees shall be paid in full prior to or in conjunction with the settlement.
  - j. There are no service, maintenance, utility, employment, or other contracts or agreements affecting Parcel D, oral or written, except as provided in paragraph 9 below.
  - k. There are no, and at settlement there will be no, outstanding contracts for any improvements to Parcel D which have not been fully paid for, and NEWDUNN shall cause to be discharged all mechanic's or materialmen's liens arising from any labor or materials furnished to the property NEWDUNN intends to sell prior to settlement.
  - l. Should any of the representations or warranties set forth in paragraphs 8.a. through 8.k. be inaccurate or untrue, as it relates to Parcel D, CITY shall have the option of (i) closing subject thereto, or (ii) canceling the Agreement.
9. Regulatory Status. The City is aware that a Consent Decree was entered on July 19, 2005 in the United States District Court for the Eastern District of Virginia (the "Decree"), of which the City acknowledges having a complete copy, and that the contents thereof are known to the City, which burdens and affects Parcel D. A copy of the Decree is attached hereto as **Exhibit B** and is hereby incorporated herein by reference.

In connection with the City's acquisition of Parcel D (the "Acquisition"), the City will use its best efforts, and will act in good faith, to cooperate with NEWDUNN fully in accomplishing the following:

- a. Relieve NEWDUNN from any and all further obligations of every kind under the Decree by seeking an amendment thereto to such effect, taking upon itself all such further obligations, and permitting NEWDUNN to transfer title to the Property to the City free of any such obligations as to NEWDUNN..
- b. Allow, upon proper application, and subject to all applicable requirements, the re-subdivision of the Property for: a) transfer to the City; and b) retention by NEWDUNN of the upland areas (and wetland areas not subject to regulation by the Decree, if any) as you may designate and in particular Parcels A, B, and C, as shown on the Plat (the "Retained Property").
- c. Provide, or permit to be retained, such easements as may be reasonably required by NEWDUNN for ingress and egress to and from the Retained Property, as well as for utilities, drainage, stormwater management facilities and the like (the "Easements").

Nothing contained hereinbefore to the contrary withstanding, should, for any reason, NEWDUNN and the City be unsuccessful in their efforts to amend the Decree as hereinabove contemplated, Newdunn shall be deemed to have and does hereby reserve unto itself, all rights in and to Parcel D necessary to fulfill its obligations under the Consent Decree, including the right of ingress and egress, the right of performing such things as may be necessary, including land disturbance, and any other rights as necessary to comply with the terms of the Decree.

In the event that the Decree is not amended, for any reason, such that the City is not substituted for NEWDUNN as the party responsible to carry out the obligations of NEWDUNN



under the Decree, then the City covenants and agrees to perform all such obligations on behalf of NEWDUNN.

10. Road Construction. The CITY will allow construction of a roadway parallel to Jefferson Avenue connecting the two currently developed parcels at 12971 and 12975 Jefferson Avenue (Parcel B and C as shown on the Plat), subject to NEWDUNN having all necessary permits from DEQ and any other necessary regulatory agencies and NEWDUNN's compliance with the City's permitting requirements for such activity. Upon completion in accordance with VDOT and the CITY standards, the CITY will, should NEWDUNN so request, accept ownership of such road and grant NEWDUNN, its tenants and other necessary users (including customers of tenants), an easement of ingress and egress over and to the same.

11. Successors and assigns, applicable law. The Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns. The Agreement shall be construed under the laws of the Commonwealth of Virginia and any legal action that may arise pertaining to the Agreement shall be brought and maintained in the Circuit Court for the City of Newport News, Virginia.

12. Future Improvement Projects. At such time as Atkinson Boulevard is constructed and/or Jefferson Avenue is widened along the Jefferson Avenue frontage of the Property, the City has no current plans to prohibit u-turns at the intersection of those two roadways. However, the City's ability to comply with NEWDUNN's request that U-Turns at said intersection not be prohibited, the parties acknowledge that the foregoing is controlled by federal and state mandated traffic management, safety regulations and circumstances at the site that are not within the City's control, and in large measure will depend on traffic counts, directional flows and other engineering studies at such time in the future as such determination is made.

13. Selling party's obligations. NEWDUNN shall have performed all covenants, agreements, and obligations, and complied with conditions required by the Agreement to be performed or complied with by it prior to the settlement, and no default hereunder by it shall have occurred or be occurring.

14. Captions. The headings and captions contained in the Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of intent of the Agreement, nor any provision herein contained.

15. Survival. The representations and warranties contained in the Agreement , including, but not limited to, those set out in paragraphs 2, 8, 9, 10, and 12, shall survive settlement hereunder and the delivery of the deed of conveyance.

16. Notice. All notices required hereunder shall be in writing and shall be deemed made and delivered when mailed by certified mail, return receipt requested, postage pre-paid to the parties at the addresses set forth below:

a. To NEWDUNN:

James M. Caplan  
500 East Main Street, Suite 1424  
Norfolk, VA 23510

b. To CITY:

City of Newport News, Virginia  
c/o City Manager  
2400 Washington Avenue, 10<sup>th</sup> Floor  
Newport News, VA 23607

with a copy to:

Office of the City Attorney  
2400 Washington Avenue, 9<sup>th</sup> Floor  
Newport News, VA 23607

Either party may at any time change their addresses for notification purposes by giving written notice of such change to the other party at the notice address.

17. Severability. Should any part of the Agreement be deemed contrary to law or otherwise ineffective, all remaining parts of the Agreement shall remain in full force and effect.

18. Entire agreement. The Agreement constitutes the entire agreement between CITY and NEWDUNN and there are no other prior or contemporaneous agreements, oral or written, and the Agreement may not be supplemented, altered, modified, or otherwise amended in any way except in writing, signed by CITY and NEWDUNN.

19. Duplicate Originals. In order to protect the rights of the parties under the Agreement, the parties hereto have agreed that duplicate originals of the Agreement shall be executed with each party retaining one fully executed original.

WITNESS the following signatures and seals:

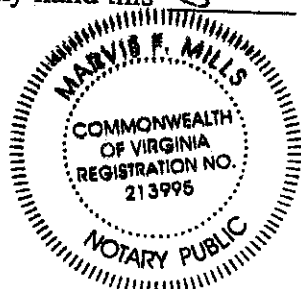
NEWDUNN ASSOCIATES, L.L.P.

By [Signature]  
James M. Caplan, Manager

COMMONWEALTH OF VIRGINIA  
City/County of Norfolk, to wit:

The undersigned Notary Public in and for the jurisdiction aforesaid hereby certifies that James M. Caplan, Manager of Newdunn Associates, L.L.P., whose name is signed to the foregoing Real Estate Purchase Agreement bearing date on the 5th day of January, 2012, has acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand this 5th day of January, 2012.



[Signature]  
Notary Public  
My Commission expires: 4/30/2013  
Registration No.: 213995

CITY OF NEWPORT NEWS, VIRGINIA

By: \_\_\_\_\_

City Manager

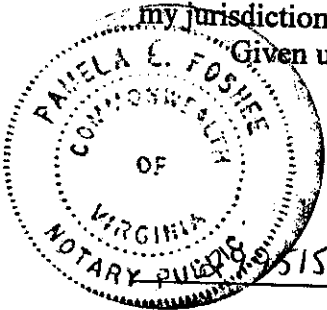
ATTEST:

Mabel Washington Jenkins  
City Clerk

COMMONWEALTH OF VIRGINIA  
City of Newport News, to wit:

The undersigned Notary Public in and for the jurisdiction aforesaid, hereby certifies that Neil A. Morgan and Mabel Washington Jenkins, whose names appear as City Manager and City Clerk, respectively, of the City of Newport News, are signed to the foregoing Real Estate Purchase Agreement bearing date on the 5<sup>th</sup> day of January, 2012, acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand this 21<sup>st</sup> day of February, 2012.



Pam E Foshee

Notary Public

My Commission expires: 8-31-2014

Registration

No.:

APPROVED AS TO FORM:

[Signature]  
City Attorney

**EXHIBIT A**

# **SURVEYOR'S CERTIFICATE:**

I HEREBY CERTIFY THAT THE PLAT SHOWN AND DESCRIBED HEREON IS A TRUE AND CORRECT SURVEY OF THE ACCURACY REQUIRED, THAT THE SOURCE OF TITLE IS CORRECT, AND THAT THE SURVEY MEASUREMENTS SHALL BE PLACED AS SHOWN HEREON IN ACCORDANCE WITH THE REQUIREMENTS OF THE CITY SUBDIVISION ORDINANCE.

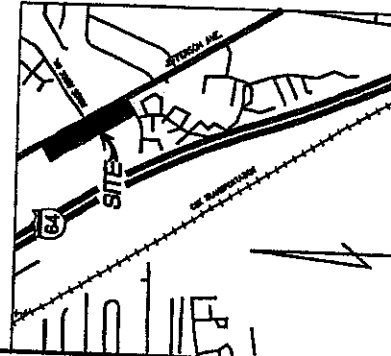
THE PERMETER SURVEY IS CORRECT TO THE BEST OF THE SURVEYOR'S KNOWLEDGE AND BELIEF, INCLUDING AN ACCURACY OF NOT LESS THAN ONE (1) FOOT IN TEN THOUSAND (10,000) FEET.



SOURCE OF TITLE AND LAST PLACE OF RECORD:  
 TAX PARCEL 065000118  
 D.B. 945, PG. 78  
 GRANTEE: NEWQUINN ASSOCIATES, LLP.  
 DATED: JANUARY 24, 1977

## **GENERAL NOTES:**

- OWNER INFORMATION: NEWQUINN ASSOCIATES, LLP.  
 500 EAST MAIN STREET, SUITE 1424  
 NORFOLK, VA 23510
- THE MERIDIAN SOURCE IS BASED ON PLAT OF RECORD AS SHOWN IN D.B. 945, PG. 78 IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS, VIRGINIA. THIS SITE IS ALSO TIED TO CITY OF NEWPORT NEWS COORDINATE MONUMENTS. 424 COORDINATES SHOWN ARE GRID COORDINATES EXPRESSED IN U.S. SURVEY FEET AND DISTANCES SHOWN ARE HORIZONTAL GROUND MEASUREMENTS. THE HORIZONTAL RELATIONSHIP TO VIRGINIA STATE PLANE SOUTH ZONE (NAD 83 - 1983 ADJUSTMENT) IS SHOWN GRAPHICALLY ON THE MERIDIAN SOURCE AND IS 7'25.2" EASTWARD OF THE MERIDIAN SOURCE USED AND DESCRIBED ABOVE.
- CURRENTLY ZONED C-1 AND M-1  
 SETBACK REQUIREMENTS: FRONT - 25 FEET  
 SIDE - 5 FEET INTERIOR  
 SIDE - 25 FEET ALONG STREET  
 REAR - 12 FEET
- THE PROPERTY, SHOWN HEREON APPEARS TO FALL INSIDE ZONE "C" AS SHOWN ON THE PLAT. PLAT A FLOOD HAZARD MAP FOR THE CITY OF NEWPORT NEWS, VIRGINIA, COMMUNITY NO. 5101034, HAS-07, EFFECTIVE DATE, MAY 2, 1977.  
 (BY SCALED MAP LOCATION AND GRAPHIC PLOTTING ONLY)
- TOTAL AREA OF SUBDIVISION: 1,850,833 SQ. FT. OR 42.719 ACRES.
- THIS SITE IS SERVED BY CITY WATER AND SEWER.
- 6" IRON PIN FOUND (UNLESS OTHERWISE NOTED)
  - 6" IRON PIN SET (No. 6 STEEL REBAR)
  - 6" MONUMENT FOUND
  - 6" MONUMENT SET (30" No. 6 STEEL REBAR SET IN 24" OF CONCRETE)



HANOVER HEIGHTS

LOCATION MAP  
 APPROXIMATE SCALE: 1"=1000'

SUBDIVISION PLAT  
 NEWQUINN ASSOCIATES, LLP.  
 (RECORDED IN D.B. 945, PG. 78)  
 NEWPORT NEWS, VIRGINIA  
 ENGINEER - SURVEYOR  
 REGISTERED PROFESSIONAL ENGINEER  
 PORTSMOUTH, VIRGINIA 23704  
 SCALE: AS NOTED  
 DATE: 10/5/2011  
 SHEET 1 OF 3

## **OWNERS CERTIFICATE:**

I (WE) HEREBY CERTIFY THAT I (WE) AM (ARE) THE OWNER(S) OF THE PROPERTY DEPICTED ON THIS PLAT. THE PLATTING OR RECORDATION OF THE FOLLOWING PROPERTY SHOWN ON THIS PLAT IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS, SHOWN HEREON AND TRUSTEES, IF ANY. WE HEREBY ESTABLISH THE LOT LINES, RIGHTS OF WAY, EASEMENTS, OPEN SPACES AND OTHER AREAS AND FACILITIES TO BE USED FOR ANY PURPOSES PERMITTED BY LAW SHALL BE OBTAINED PRIOR TO THE COMMENCEMENT OF GRADING AND OTHER ON-SITE ACTIVITIES.

NEWQUINN ASSOCIATES, LLP.

SIGNATURE	DATE
PRINT NAME	
TITLE	
SIGNATURE	DATE
PRINT NAME	
TITLE	

STATE OF VIRGINIA, CITY OF NEWPORT NEWS, TO-WIT:

I, \_\_\_\_\_, A NOTARY PUBLIC IN AND FOR THE CITY AND STATE AFORESAID, DO HEREBY CERTIFY THAT \_\_\_\_\_, WHOSE NAMES ARE SIGNED TO THE FOREGOING WRITING, HAVE ACKNOWLEDGED THE SAME BEFORE ME IN MY CITY AND STATE AFORESAID.

GIVEN UNDER MY HAND THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011.

MY COMMISSION EXPIRES: \_\_\_\_\_

NOTARY PUBLIC

APPROVED FOR  
 THE CITY OF NEWPORT NEWS,  
 VIRGINIA

EVERETT P. SHUPPER, PE, BCEE, DIRECTOR OF ENGINEERING

APPROVED AS TO FORM

JOSEPH DURANT  
 DEPUTY CITY ATTORNEY

TESTE \_\_\_\_\_ CLERK

HELI A. MORGAN, CITY MANAGER

APPROXIMATE SCALE: 1"=1000'

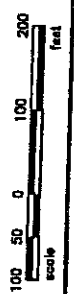


NORTH

JEFFERSON AVENUE

MATCH LINE - SEE SHEET 2

LINE	LENGTH	AREA
1.0	11.65	287,471.12
1.1	11.65	287,471.12
1.2	11.65	287,471.12
1.3	11.65	287,471.12
1.4	11.65	287,471.12
1.5	11.65	287,471.12
1.6	11.65	287,471.12
1.7	11.65	287,471.12
1.8	11.65	287,471.12
1.9	11.65	287,471.12
2.0	11.65	287,471.12
2.1	11.65	287,471.12
2.2	11.65	287,471.12
2.3	11.65	287,471.12
2.4	11.65	287,471.12
2.5	11.65	287,471.12
2.6	11.65	287,471.12
2.7	11.65	287,471.12
2.8	11.65	287,471.12
2.9	11.65	287,471.12
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3.2	11.65	287,471.12
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3.6	11.65	287,471.12
3.7	11.65	287,471.12
3.8	11.65	287,471.12
3.9	11.65	287,471.12
4.0	11.65	287,471.12
4.1	11.65	287,471.12
4.2	11.65	287,471.12
4.3	11.65	287,471.12
4.4	11.65	287,471.12
4.5	11.65	287,471.12
4.6	11.65	287,471.12
4.7	11.65	287,471.12
4.8	11.65	287,471.12
4.9	11.65	287,471.12
5.0	11.65	287,471.12
5.1	11.65	287,471.12
5.2	11.65	287,471.12
5.3	11.65	287,471.12
5.4	11.65	287,471.12
5.5	11.65	287,471.12
5.6	11.65	287,471.12
5.7	11.65	287,471.12
5.8	11.65	287,471.12
5.9	11.65	287,471.12
6.0	11.65	287,471.12
6.1	11.65	287,471.12
6.2	11.65	287,471.12
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6.5	11.65	287,471.12
6.6	11.65	287,471.12
6.7	11.65	287,471.12
6.8	11.65	287,471.12
6.9	11.65	287,471.12
7.0	11.65	287,471.12
7.1	11.65	287,471.12
7.2	11.65	287,471.12
7.3	11.65	287,471.12
7.4	11.65	287,471.12
7.5	11.65	287,471.12
7.6	11.65	287,471.12
7.7	11.65	287,471.12
7.8	11.65	287,471.12
7.9	11.65	287,471.12
8.0	11.65	287,471.12
8.1	11.65	287,471.12
8.2	11.65	287,471.12
8.3	11.65	287,471.12
8.4	11.65	287,471.12
8.5	11.65	287,471.12
8.6	11.65	287,471.12
8.7	11.65	287,471.12
8.8	11.65	287,471.12
8.9	11.65	287,471.12
9.0	11.65	287,471.12
9.1	11.65	287,471.12
9.2	11.65	287,471.12
9.3	11.65	287,471.12
9.4	11.65	287,471.12
9.5	11.65	287,471.12
9.6	11.65	287,471.12
9.7	11.65	287,471.12
9.8	11.65	287,471.12
9.9	11.65	287,471.12
10.0	11.65	287,471.12



**SUBDIVISION PLAT**

**NEWDUNN ASSOCIATES, L.L.P.**

(RECORDED IN D.B. 845, PG. 78)

**NEWPORT NEWS, VIRGINIA**

DRAWN BY: MSA

COMP. BY: MSA

CHECKED BY: CJB

SCALE: 1"=100'

DATE: 10/5/11

REV:

SHEET NO. 3 OF 3

**HOGGARD-EURE ASSOCIATES, P.C.**

**Engineers-Surveyors-Planners**

901 PortCentre Parkway, Suite 5 (757)444-9870

Portsmouth, Virginia 23704



**EXHIBIT B**

U.S. DISTRICT COURT  
1986

RECEIVED

MAY 20 2005

CLERK, US DISTRICT COURT  
NORFOLK, VA

FILED

JUL 29

*[Handwritten signature]*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

NEWDUNN ASSOCIATES,  
ORION ASSOCIATES and  
NORTHWEST CONTRACTORS,

Defendants.

Civil Action No. 2:01CV508

CONSENT DECREE

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States Army Corps of Engineers ("Corps"), filed the Complaint herein against Defendants Newdunn Associates, Orion Associates and Northwest Contractors (collectively, "Defendants"), alleging that Defendants violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a);

WHEREAS, the Complaint alleges that Defendants violated CWA Section 301(a) by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United States at a site located in Newport News, Virginia (the "Site") and more fully described in the Complaint, without authorization by the United States Department of the Army ("the Corps");

WHEREAS, the Complaint seeks (1) to enjoin the discharge of pollutants into waters of the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendants, at their own expense and at the direction of the Corps, to restore and/or mitigate the

WHEREAS, the United States Court of Appeals for the Fourth Circuit has entered its opinion in the appeal of this case and has ruled in favor of the United States and against the Defendants;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States' claims under the CWA set forth in the Complaint regarding the Site;

WHEREAS, the United States and Defendants agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States' claims under the CWA against Defendants in this case; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States' claims against Defendants in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

# I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the Eastern District of Virginia pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the Defendants conduct business in this District, the subject property is located in this District, and the causes of action alleged herein arose in this District.

3. The Complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

# II. APPLICABILITY

4. The obligations of this Consent Decree shall apply to and be binding upon Defendants, their officers, directors, agents, employees and servants, and their successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with any of the Defendants whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against a Defendant, the Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors or assigns or any person, firm or corporation acting in concert or participation with the Defendant, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the Site (as described in Appendix A appended hereto and incorporated herein by reference) shall not alter or relieve Defendants of their obligation to comply with all of the terms of this Consent Decree. At least fifteen (15) days

prior to the transfer of ownership or other interest in the Site, the party making such transfer shall provide written notice and a true copy of this Consent Decree to its successors in interest and shall simultaneously notify the Corps and the United States Department of Justice at the addresses specified in Section IX below that such notice has been given. As a condition to any such transfer, the Defendant making the transfer shall reserve all rights necessary to comply with the terms of this Consent Decree.

### III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the Complaint against the Defendants under CWA Section 301 concerning the Site.

7. It is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendants to achieve and maintain full compliance with, and to further the purposes of, the CWA.

8. Defendants' obligations under this Consent Decree are joint and several.

9. Except as in accordance with this Consent Decree, Defendants and Defendants' agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States at the Site, unless such discharge complies with the provisions of the CWA and its implementing regulations.

10. The parties acknowledge that Nationwide Permit 32, found at 67 Fed. Reg. 2020 (January 15, 2002), authorizes any fill insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree. Any such discharge of dredged or fill material necessary for work required by this Consent Decree shall be subject to the conditions of the Nationwide Permit and this Consent Decree.
11. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the United States Army Corps of Engineers to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the Corp's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).
12. This Consent Decree in no way affects or relieves Defendants of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.
13. This Consent Decree in no way affects the rights of the United States as against any person not a party to this Consent Decree.
14. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.
15. Nothing in this Consent Decree shall constitute an admission of fact or law by any party

#### IV. SPECIFIC PROVISIONS

##### CIVIL PENALTIES

16. Defendants shall pay a civil penalty to the United States in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00), within 60 days of entry of this Consent Decree, except that said penalty payable to the United States shall be reduced by any amount up to a maximum amount of One Hundred and Fifty Thousand Dollars (\$150,000.00) assessed as a civil penalty against Defendants by the Commonwealth of Virginia in *Dennis H. Treacy, Director, Department of Environmental Quality and State Water Control Board v. Newdunn Associates, L.L.P.*, Chancery No. CH0134415W-01, as long as the penalty assessed by the Commonwealth is satisfied by direct payment or performance of a supplemental environmental project.

17. Defendants shall make the above-referenced payment by check payable to "Department of Justice" and bearing a notation in the comment section that reads: "U.S. v. Newdunn et al., USAOID 2001V01101." The check shall be delivered to: Financial Litigation Unit, Office of the U.S. Attorney, 8000 World Trade Center, 101 W. Main St., Norfolk, Virginia 23510. Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Virginia. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

18. Upon payment of the civil penalty required by this Consent Decree, Defendants shall provide written notice at the addresses specified in Section X of this Consent Decree that such payment was made in accordance with Paragraph 17.

19. Civil penalty payments pursuant to this Consent Decree (including stipulated penalty payments under Section VIII) are penalties within the meaning of Section 162(f) of the

Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

RESTORATION AND MITIGATION

20. Defendants shall perform restoration projects under the terms and conditions stated in Appendix B appended hereto and incorporated herein by reference.
21. Upon completion of the terms and conditions of Appendix B, Defendants shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in any manner whatsoever any wetland area identified in Attachment 1 to Appendix B, except as approved by the Corps.
22. To ensure that all restoration areas remain undisturbed, Defendants shall, within fifteen (15) days of entry of this Consent Decree, record a certified copy of this Consent Decree with the Clerk of the Circuit Court in the City of Newport News, Virginia. Thereafter, each deed, title, or other instrument conveying an interest in any property identified in Appendix A shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.
23. As compensatory mitigation for temporary losses, Defendants shall, within 30 days after entry of this Consent Decree by the Court, purchase six credits at a Corps/DEQ approved wetland mitigation bank within the City of Suffolk, Isle of Wight County, or the City of Chesapeake, or pay Seventy-Five Thousand Dollars (\$75,000.00) to:

The Virginia Aquatic Resources Trust Fund  
c/o The Nature Conservancy of VA (TNC)  
Ms. Linda Crowe  
490 Westfield Road



Charlottesville, VA 22901

Any payment to the Virginia Aquatic Resources Trust Fund (VARTF) is for the purpose of protecting, in perpetuity, waters, wetlands, and their upland buffers, and shall be designated for project number (99-R1114). Include applicant's name, HUC Code, and VARTF voucher in any correspondence to TNC.

**V. NOTICES AND OTHER SUBMISSIONS**

24. Within 30 days after the deadline for completing any task set forth in Appendix B of this Consent Decree, Defendants shall provide the United States with written notice, at the addresses specified in Section X of this Consent Decree, of whether or not that task has been completed.

25. If the required task has been completed, the notice shall specify the date when it was completed, and explain the reasons for any delay in completion beyond the scheduled time for such completion required by the Consent Decree.

26. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, the Defendants shall, by signature of a senior management official, certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

**VI. RETENTION OF RECORDS AND RIGHT OF ENTRY**

27. Until ten years after entry of this Consent Decree, Defendants shall preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate in any manner to the performance of the tasks in Appendix B, regardless of any corporate retention policy to the contrary. Until ten years after entry of this Consent Decree, Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in Appendix B.

28. At the conclusion of the document retention period, Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Defendants shall deliver any such records or documents to the Corps. The Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendants assert such a privilege, they shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

29. A. Until termination of this Consent Decree, the United States and its authorized representatives and contractors shall have authority at all reasonable times to enter the Defendants' premises to:

- 1) Monitor the activities required by this Consent Decree;
- 2) Verify any data or information submitted to the United States;
- 3) Obtain samples;
- 4) Inspect and evaluate Defendants' restoration and/or mitigation activities; and
- 5) Inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

B. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States to conduct inspections, to require monitoring and to obtain information from the Defendants as authorized by law.

## VII. DISPUTE RESOLUTION

30. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and Defendants affected by the dispute to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and Defendants cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fourteen (14) days after the end of the informal negotiations period, the Defendants file a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Defendants shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA, and that the Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

31. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. The Defendants shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Defendants shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in

accordance with the objectives of this Consent Decree, and that the Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

32. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendants under this Consent Decree, except as provided in Paragraph 39 below regarding payment of stipulated penalties.

#### VIII. FORCE MAJEURE

33. Defendants shall perform the actions required under this Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Defendants, including their employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events (except to the extent that such events cause soil conditions that prevent soils restoration as required by section 2 of Appendix B), changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to timely and properly apply for and diligently pursue the obtaining of any necessary federal, state or local permits.

34. If Defendants believe that a Force Majeure event has affected Defendants' ability to perform any action required under this Consent Decree, Defendants shall notify the United States in writing within fourteen (14) calendar days after the event at the addresses listed in Section IX. Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay; and
- D. any measures taken or planned by the Defendants to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendants may also provide to the United States any additional information that they deem appropriate to support their conclusion that a Force Majeure event has affected their ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

35. Within fourteen (14) days after receiving notice from Defendants pursuant to paragraph 34, the United States shall notify the Defendants in writing of its determination of whether conditions constitute a Force Majeure event. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendants shall coordinate with the Corps to determine when to begin or resume the operations that had been affected by any Force Majeure event.

36. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any party may seek a resolution of the dispute under the procedures in Section VI of this Consent Decree.

37. Defendants shall bear the burden of proving (1) that the noncompliance at issue was caused by circumstances reasonably beyond the control of Defendants and any entity controlled by Defendants, including their contractors and consultants; (2) that Defendants or any entity controlled by Defendants could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

#### IX. STIPULATED PENALTIES

38. After entry of this Consent Decree, if Defendants fail to timely perform any action required pursuant to the Consent Decree (including Appendix B), the Defendants shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- |    |   |                    |
|----|---|--------------------|
| A. | For Day 1 up to and including<br>Day 30 of non-compliance | \$1,000.00 per day |
| B. | For Day 31 up to and including<br>60 of non-compliance    | \$2,000.00 per day |
| C. | For Day 61 and beyond<br>of non-compliance                | \$3,000.00 per day |

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued. Penalties shall not be assessed solely as a result of the failure of vegetation to achieve performance standards as required by section 3 and 4 of Appendix B.

39. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VII and/or the Force Majeure provisions in Section VIII shall be resolved upon motion to this Court as provided in Paragraphs 30 and 31.

40. The filing of a motion requesting that the Court resolve a dispute shall stay Defendants' obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Defendants do not prevail on the disputed issue, stipulated penalties shall be paid by Defendants as provided in this Section.

41. To the extent Defendants demonstrate to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Paragraph 33 above) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

42. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

43. Defendants shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2001V01101 and the DOJ case number 90-5-1-1-16430. Payment shall be made in accordance with



instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Virginia. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Defendants shall provide written notice, at the addresses specified in Section IX of this Decree.

#### X. ADDRESSES

44. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

##### A. TO THE CORPS:

- (1) Joseph R. Loschi  
District Counsel  
United States Army Corps of Engineers  
Norfolk District  
803 Front Street  
Norfolk, Virginia 23510
- (2) Robert Hume  
Regulatory Branch Chief  
United States Army Corps of Engineers  
Norfolk District  
803 Front Street  
Norfolk, Virginia 23510

##### B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

Section Chief  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, DC 20026-3986

##### C. TO DEFENDANTS:

John W. Daniel, II

Troutman Sanders LLP  
P.O. Box 1122  
Richmond, VA 23218-1122

Newdunn Associates  
500 East Main Street, Suite 1424  
Norfolk, VA 23510

Douglas E. Kahle  
Pender & Coward, P.C.  
222 Central Park Avenue  
Virginia Beach, VA 23462

#### XI. COSTS OF SUIT

45. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should Defendants subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, Defendants shall be liable for any costs or attorneys' fees incurred by the United States in any action against Defendants for noncompliance with or enforcement of this Consent Decree.

#### XII. PUBLIC COMMENT

46. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. The Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified the Defendants in writing that it no longer supports entry of the Consent Decree.

#### XIII. CONTINUING JURISDICTION OF THE COURT

47. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

#### XIV. MODIFICATION

48. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and the Defendants and approved by the Court.

#### XV. TERMINATION

49. Except for Paragraphs 21 and 22, this Consent Decree may be terminated by either of the following:

A. Defendants and the United States may at any time make a joint motion to the Court for termination of this Decree or any portion of it; or

B. Defendants may make a unilateral motion to the Court to terminate this Decree after each of the following has occurred:

1. Defendants have obtained and maintained compliance with all provisions of this Consent Decree and the CWA for ten (10) consecutive years;

2. Defendants have paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;

3. Defendant's have certified compliance pursuant to subparagraphs 1 and 2 above to the Court and all Parties; and

4. The Corps, within forty-five (45) days of receiving such certification from the Defendants, has not contested in writing that such compliance has been achieved. If the Corps disputes Defendant's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

IT IS SO ORDERED.

Dated and entered this 19<sup>th</sup> day of July, 2005

Henry Coke Morgan  
United States District Judge

ON BEHALF OF THE UNITED STATES:

KELLY A. JOHNSON  
Acting Assistant Attorney General  
Environment and Natural Resources Division

for Ken P. Skutt, AUSA  
Kent Hanson, Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, DC 20026-3986  
(202)514-2327

Dated: 5/20/05

PAUL J. McNULTY  
United States Attorney

Ken P. Skutt

Dated: 5/20/05

A TRUE COPY, TESTE  
CLERK, U.S. DISTRICT COURT  
BY Elaine Cavallaro  
DEPUTY CLERK

*copies Mailed*  
*7/29/05*  
*JC*

Craig P. Wittman, VSB 39409  
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101 West Main Street  
Norfolk, Virginia 23510  
(757)441-6331

OF COUNSEL:

Katherine D. Will  
U.S. Army Corps of Engineers  
Norfolk District  
803 Front Street  
Norfolk, Virginia 23510-1096

ON BEHALF OF NEWDUNN ASSOCIATES,  
ORION ASSOCIATES, AND  
NORTHWEST CONTRACTORS:



Douglas E. Kahle  
Pender & Coward, P.C.  
222 Central Park Avenue, Suite 400  
Virginia Beach, VA 23462-3026  
(757) 490-9273

Dated: MAY 18, 2005

## APPENDIX A

## Legal Description of the "Site"

The "Site" involved in this action is known as the Newdunn property, an approximately 42.72-acre property located at 12971 Jefferson Avenue in Newport News, Virginia (Tax Parcel No., 065000119), and is more fully described as follows:

All those certain parcels of land, with the buildings and improvements thereon and the appurtenances thereon to belonging, lying, situate, and being in the City of Newport News, Virginia, and known, numbered and designated as Parcel 1, Parcel 2, Parcel 3 and Parcel 4, as shown on a plat entitled "Release Plat for Acquisitions, Inc., Newport News, Virginia, Scale 1" = 500' February 18, 1972, by Baldwin and Gregg, Engineers, Surveyors, and Planners, Norfolk, Virginia," which said plat is duly recorded in the Clerk's Office of the Hustings Court for the City of Newport News, Virginia, and which said parcels are more particularly bounded and described as follows, to wit:

**PARCEL 1**

Beginning at a point on the west side of Jefferson Avenue 3,777.96 feet, more or less, south of the southwestern intersection of Jefferson Avenue with the southern line of the C&O Railway Co., right-of-way, as shown on said plat; and thence turning and running in a southwesterly direction South 33°38'04" West 197.09 feet to a point thence continuing in said southwesterly direction South 28°32'32" West 216.32 feet to a point; thence continuing in said southwesterly direction South 20°30'32" West 203.00 feet to a point; thence continuing in said southwesterly direction South 34°53'43" West 115.58 feet to a point; thence continuing in said southwesterly direction South 31°30'00" West 133.90 feet to a point thence continuing in said southwesterly direction South 37°05'00" West 138.60 feet to a point; thence continuing in said southwesterly direction South 16°29'50" West 438.80 feet to a point; thence continuing in said southwesterly direction South 08°15' West 126.70 feet to a point; thence continuing in said southwesterly direction South 15°45' West 233.89 feet to a point in the eastern side of the right-of-way for Interstate 64; thence turning and running in a northerly direction North 15°44'04" West 634.98 feet to a point; thence continuing in said northerly direction along the arc of

a curve with a radius of 23,078.32 feet an arc distance 406.40 feet to a point; thence turning and running in a northeasterly direction North  $35^{\circ}27'58''$  East 1,205.04 feet to a point; thence turning and running in an easterly direction North  $65^{\circ}11'09''$  East 122.92 feet to a point in the western side of Jefferson Avenue; thence turning and running in a southerly direction along the western side of Jefferson Avenue South  $24^{\circ}48'51''$  East 440.0 feet to the point of beginning aforesaid.

### PARCEL 2

Beginning at a point which said point is 122.92 feet South  $65^{\circ}11'09''$  West from a second point on the western side of Jefferson Avenue which said latter point is 3,337.96 feet, more or less, south of the southwestern intersection of Jefferson Avenue with the southern line of the C&O Railway Co. right-of-way, as shown on said plat; and thence turning and running in a southwesterly direction South  $35^{\circ}27'58''$  West 1,205.04 feet to a point in the eastern side of the Interstate 64 right-of-way; thence turning and running in a northerly direction along the arc of a curve whose radius equals 23,078.32 feet an arc distance of 445.94 feet to a point; thence continuing in a northerly direction North  $13^{\circ}59'56''$  West 504.85 feet to a point; thence continuing in a northerly direction along the arc of a curve to the left with a radius of 23,118.32 feet an arc distance of 1,413.00 feet to a point; thence continuing in a northerly direction North  $22^{\circ}28'22''$  West 110.0 feet to a point; thence turning and running in a southeasterly direction South  $85^{\circ}41'45''$  East 739.86 feet to a point; thence turning and running in a southerly direction along an arc of a curve to the right whose radius is 650.0 feet an arc distance of 418.28 feet to a point; thence running in a southerly direction South  $24^{\circ}48'51''$  East 1,026.21 feet to a point; thence turning and running in an easterly direction along the arc of a curve to the left whose radius is 500 feet an arc distance of 293.67 feet to the point of beginning aforesaid.

### PARCEL 3

Beginning at a point which is the southwestern intersection of Jefferson Avenue with the southern line of the C&O Railway Co. right-of-way, as shown on said plat; and thence running in a southerly direction along the western side of Jefferson Avenue South  $24^{\circ}48'51''$  East 1,100 feet to a point; thence turning and running in a westerly direction South  $65^{\circ}11'09''$  West 900.77 feet to a point thence turning and running in a northerly direction North  $22^{\circ}28'22''$  West 520.68 feet to a point; thence continuing in a northerly direction North  $24^{\circ}50'38''$  West 579.36 feet to a point in the southern line of the C&O Railway Co. right-of-way; thence turning and running along the southern line of the C&O Railway Co. right-of-way in an easterly direction North  $65^{\circ}09'37''$  East 879.80 feet to the point of beginning aforesaid.

PARCEL 4

Beginning at a point in the western side of Jefferson Avenue which said point is 3,337.96 feet south of the southwestern intersection of Jefferson Avenue with the southern line of the C&O Railway Co. right-of-way, as shown on said plat; and thence turning and running in a westerly direction South  $65^{\circ}11'09''$  West 122.92 feet to a point; thence continuing in a westerly direction along the arc of a curve to the right with a radius of 500 feet an arc distance of 293.67 feet to a point; thence turning and running in a northerly direction North  $24^{\circ}48'51''$  West 1,026.21 feet to a point; thence continuing in a northerly direction along an arc of a curve to the right with a radius of 650 feet an arc distance of 418.28 feet to a point; thence turning and running in a westerly direction North  $85^{\circ}41'45''$  West 739.86 feet to a point in the eastern side of the right-of-way of Interstate 64; thence turning and running in a northerly direction North  $22^{\circ}28'22''$  West 378.19 feet to a point; thence turning and running in an easterly direction North  $65^{\circ}11'09''$  East 900.77 feet to a point in the western side of Jefferson Avenue; thence turning and running in a southerly direction along the western side of Jefferson Avenue South  $24^{\circ}48'51''$  East 2,237.96 feet to the point of beginning aforesaid.

SAVE AND EXCEPT the following described property:

(a) That portion of Parcels 1 and 2 conveyed by Newjeff Corp. to Rollingwood Associates dated February 21, 1974, and recorded in the aforesaid Clerk's Office in Deed Book 854, at page 315. Said property contains approximately 21.170 acres as shown on plat entitled, "Plat of Part of Property of Acquisitions, Inc." dated January 22, 1973, as more particularly described on said plat:

Beginning at a point on the western side of Jefferson Avenue (Va. Rte. 143) 3,397.96' south of the Chesapeake and Ohio Railway Company right-of-way; thence continuing southward along said western line of Jefferson Avenue (Va. Rte. 143) S.  $24^{\circ}48'51''$  E. 380.00' to a point; thence southwestward S.  $33^{\circ}38'04''$  W. 197.09' to a point; thence S.  $28^{\circ}32'32''$  W. 216.32' to a point; thence S.  $20^{\circ}30'32''$  W. 203.00' to a point; thence S.  $34^{\circ}53'43''$  W. 115.58' to a point; thence S.  $31^{\circ}30'00''$  W. 133.90' to a point; thence S.  $37^{\circ}05'00''$  W. 138.60' to a point; thence S.  $16^{\circ}29'50''$  W. 438.80' to a point; thence S.  $08^{\circ}15'00''$  W. 126.70' to a point; thence S.  $15^{\circ}45'00''$  W. 233.89' to a point in the eastern right-of-way line of Interstate Route 64; thence northward along the said east line of Interstate Route 64 N.  $15^{\circ}44'04''$  W. 634.98' to a point; thence along the arc of a curve to the left with a radius of 23,078.32' a distance of 852.34' to a point; thence leaving Interstate Route 64 to the east S.  $75^{\circ}06'24''$  E. 167.80' to a point; thence N.  $67^{\circ}20'00''$  E. 190.00' to a point; thence N.  $21^{\circ}04'49''$  E. 301.19' to a point; thence N.  $65^{\circ}11'09''$  E. 575.88' to the point of beginning, said parcel containing 21.170 acres.

SAVE AND EXCEPT, however, the property dedicated to the City of Newport News, Virginia, for the purpose of water, sewer and utility easements and streets as set forth on a plat entitled "Subdivision of Rolling Woods Section 1, Newport News, Virginia, Scale: 1" = 100'. August 2, 1973, Baldwin & Gregg, Engineers-Surveyors-Planners, Norfolk,



Virginia" and "Subdivision of Rolling Woods, Section 2, Newport News, Virginia, Scale: 1" = 100', August 15, 1973, Baldwin & Gregg, Engineers-Surveyors-Planners, Norfolk, Virginia" which is duly recorded in the aforementioned Clerk's Office in Plat Book 9, page 30, and Plat Book 9, page 41, respectively.

(b) That portion of Parcel 2 conveyed by Newjeff Corp. to the City of Newport News, Virginia, by deed dated September 24, 1973, and duly recorded in the aforesaid Clerk's Office in Deed Book 842, at page 268. Said property is more particularly described as follows:

Beginning at a point on the southern line of Green Grove Lane extended westwardly the following courses and distances: Westward from the western end of the 25' radius at the southwest corner of Green Grove Lane and Chinkapin Trail, along the arc of a curve to the right having a radius of 379.70' a distance of 29.52' to a point; thence along the arc of a curve to the left having a radius of 379.70' a distance of 43.60 to a point; thence along the arc of a curve to the right having a radius of 130' a distance of 81.97' to a point as shown on the plat entitled, "Subdivision of Rolling Woods, Section One, Newport News, Virginia" duly of record in the Clerk's Office of the Circuit Court of the City of Newport News, Virginia, in Plat Book 9, at page 30; said point being the point of beginning for the pump station site and also the northeast corner of the parcel for the pump station; thence southwest along the western side of Parcel "B" as shown on the above mentioned plat S. 65°11'09" W. 29.23' to a point; thence S. 21°04'49" W. 51.06' to a point; thence N.58°03'15" W. 78.93' to a point; thence N. 43°19'54" E. 70.20' to a point; thence eastward along the arc of a curve to the left with a radius of 130' a distance of 72.64' to the point of beginning. Said parcel is also shown as "Pump Station Site" on the plat entitled "Subdivision of Rolling Woods Section Two, Newport News, Virginia, made August 15, 1973, by Baldwin and Gregg, Engineers-Surveyors-Planners, and recorded in the aforementioned Clerk's Office in Plat Book 9, page 41.

(c) That portion of Parcels 2 and 4 conveyed by Newjeff Corp. to The Southland Corporation dated January 8, 1975, and duly recorded in the Clerk's Office aforesaid in Deed Book 882, at page 262. Said property contains approximately .393 acres as shown on that plat entitled "Plat of Property of Jefferson Avenue and Green Grove Lane, Newport News, Virginia" dated November 11, 1974, and reference to said plat is made for a more particular description thereof.

(d) That portion of Parcels 1, 2, and 4 dedicated by Newjeff Corp. to City of Newport News, Virginia, by three plats, one of which is entitled "Subdivision of Rolling Woods, Section 1, Newport News, Virginia" dated August 2, 1973, and duly recorded in the Clerk's Office aforesaid in Plat Book 9, page 30, the second of which is entitled "Subdivision of Rolling Woods, Section 2, Newport News, Virginia, dated August 15, 1973, and duly recorded in the Clerk's Office aforesaid in Plat Book 9, page 41, and the third of which is entitled "Subdivision of Part of Property of Newjeff Corporation, Newport News, Virginia," dated December 26, 1974, made by Baldwin & Gregg, Engineers-Planners-Surveyors, and duly recorded in the Clerk's Office aforesaid in Plat

Book 9, page 95, and reference to said plats is made for a more particular description thereof.

(e) All those certain pieces, parcels, or tracts of land situate, lying and being in the City of Newport News, Virginia and being known and designated as Parcel 3 and Parcel 5 as shown on that certain plat entitled, "Plat of Parcels to be Dedicated Vacated & Conveyed at Entrance to Subdivision & Pump Station Site, WOODSIDE, Newport News, Virginia," dated April 6, 1976 and prepared by Baldwin and Gregg, Engineers, Planners, and Surveyors, which plat is attached to that Deed of Exchange dated April 7, 1976 and recorded April 16, 1976, in Deed Book 917, page 313.

In addition to PARCELS 1, 2, 3, and 4, the following:

All that certain piece, parcel, or tract of land situate, lying and being in the City of Newport News, Virginia and being known and designated as Parcel 4 as shown on that certain plat entitled, "Parcels to be Dedicated Vacated & Conveyed At Entrance to Subdivision & Pump Station Site, WOODSIDE, Newport News, Virginia," dated April 6, 1976 and prepared by Baldwin and Gregg, Engineers, Planners, and Surveyors, which plat is attached to that Deed of Exchange dated April 7, 1976 and Recorded April 16, 1976, in Deed Book 917, page 313.

## APPENDIX B

### RESTORATION PLAN FOR THE NEWDUNN PROPERTY IN THE CITY OF NEWPORT NEWS, VIRGINIA

April 22, 2005

#### 1) Background:

The Newdunn Property is an approximately 42.7-acre undeveloped tract located southwest of the corner of Industrial Park Drive and Jefferson Avenue. Approximately 25.7 acres of this land (most of which was forested wetlands) was cleared, filled, ditched, and drained in preparation for site development. Newdunn now plans to restore all the wetlands on this property. This document describes the wetland restoration plan for the Newdunn property. The areas to be restored are the wetland areas identified on Attachment 1 (drawing entitled CH & B Associates, City of Newport News, Wetland Delineation Plan, by Kimley-Horn and Associates, Inc., dated 19 October 1999) that have been filled, ditched, or otherwise disturbed as the result of activities occurring before the date of this restoration plan.

#### 2) Soils Restoration:

Soils on the Newdunn site prior to the wetland disturbance were relatively level and flat, with subtle surface drainage, primarily to the west; and scattered small mounds and depressions. As the clearing, filling, and ditching were performed, soil was excavated from the ditches and placed in the area between the ditches and then graded and crowned to encourage surface runoff. Therefore, in order to restore pre-disturbance conditions, soil from the crowns must be pushed into the ditches and compacted with the earth moving equipment and graded to create slightly sloped soil surface that restores original drainage patterns. The desired condition is rough soil surface with a pit-and-mound micro-topography. Sub-soil (C-Horizon material), which is currently concentrated in the crowns, will be used to the extent practicable to fill the ditches.

The disturbance has resulted in significant soil compaction, which is undesirable for wetland restoration. In order to reverse the soil compaction, it will be necessary to first deep chisel plow ("rip") the site to a depth of not less than eighteen (18) inches. Deep ripping shall be done at least twice: first run all in one direction; second run perpendicular to the first run, unless first run created large mounds, in which case second run can be 60 degrees to first run. The Corps may, in its discretion, require a third run of deep ripping. After ripping, the site shall be disked one time in a manner that will knock down major ridges. Disking must be done with a forestry-type site preparation disk pulled by a four-wheel drive tractor with low ground pressure tires. It will be important that ripping and disking be done during a period of proper soil moisture. The soil must not be too wet or the compaction cannot be reversed, and the soil must not be too dry or the equipment cannot effectively break the soil. A representative from Davis Environmental Consultants (or other acceptable wetland consultant) shall determine when the soil moisture conditions are appropriate for all deconsolidation work, and notify the Corps and VDEQ of the dates that this work is being performed. A farmer with knowledge in cultivating high clay soils is likely the best person to perform this work.

After the original grade is restored, a minimum of 35 dry tons/acre of fully composted, stable organic amendments (which may be from cotton gin or other Corps approved source) shall be placed uniformly across the restoration area. The organic amendments shall be uniformly distributed and incorporated into the subsoil to a minimum depth of six (6) to eight (8) inches. Spreading shall be performed in a manner that seeding and planting can proceed with a minimum of additional soil preparation and tillage. Soil amendments shall not be placed while in a frozen or muddy condition, or when the subgrade is excessively wet or in a condition that may otherwise be detrimental to proper grading and seedbed preparation.

The land shall be limed and fertilized in accordance with standard agricultural procedures for "new ground." Five soil samples will be taken within a depth of twelve (12) inches at random locations on the property and analyzed for pH and nutrient characteristics. Lime and fertilizer shall be applied across the entire wetland restoration area in accordance with the recommendations of the soil laboratory, prior to any planting. Lime shall be applied (if needed) to achieve soil pH of 5.5 to 6.0. The effects of liming and fertilization are expected to last for several years until the soil naturally returns to the pre-disturbance conditions. The lime and fertilizer will allow for quick stabilization of the site by encouraging quick establishment of native vegetation. The soil shall be tested and supplemental applications of lime and fertilizer shall be applied, if necessary, during the first monitoring period.

The next step in the soil restoration will be the recreation of pit-mound micro-topography on the site. To accomplish this without compacting the soil, light equipment such as a Bobcat or a farm tractor will be used. Approximately one cubic yard of soil will be removed from a shallow depression (0.05 to 1.0 foot deep) and deposited immediately adjacent to the depression. Pits and mounds will be irregularly shaped and distributed randomly (not in a pattern) over the site in a density comparable to adjacent undisturbed forested wetlands. This better mimics micro-depressions that occur naturally on that landscape.

Newdunn will, at reasonable intervals, notify the Corps of the progress of soils restoration work, and will, when appropriate, request that the Corps inspect work that has been performed. Requests for inspection shall be e-mailed to [David.A.Knepper@nao02.usace.army.mil](mailto:David.A.Knepper@nao02.usace.army.mil), [Bob.J.Hume@nao02.usace.army.mil](mailto:Bob.J.Hume@nao02.usace.army.mil), and [Lynette.R.Rhodes@nao02.usace.army.mil](mailto:Lynette.R.Rhodes@nao02.usace.army.mil). Within five business days of a request for inspection, the Corps will inspect the work performed and either approve or reject the work. Newdunn will notify the Corps and VDEQ once the final grading and application of soil amendments is completed, prior to the start of any plantings. The Corps and VDEQ will inspect work performed to date. Following approval from the Corps and DEQ, Newdunn may commence planting.

### 3) Plantings:

The wetland restoration area shall be planted with 400 bare root oak seedlings per acre. Water oak (*Quercus nigra*), Willow oak (*Quercus phellos*), Cherry bark oak (*Quercus pagadofolia*), and Swamp chestnut oak (*Quercus michauxii*), will be planted depending on availability. In the event that some of the above species are not available, or not available in sufficient numbers, then White oak (*Quercus alba*) will be planted on drier micro-sites, and Overcup oak (*Quercus lyratta*) will be planted on wetter micro-sites to supplement the plantings. To insure diversity, no

one oak species will comprise more than 70% of the oak seedlings planted. In addition to the oaks 15 Black willow (*Salix nigra*) whips shall be planted per acre. Whips will be approximately 1/2 to one inch in diameter and will be cut back to where 3 to 4 feet will extend above the ground. Approximately half of the Black willow whips will be planted in the aforementioned depressions that will be constructed on the site.

The site is expected to be captured quickly by dense native herbaceous vegetation from the natural seed bank. However, if the herbaceous cover from the natural seed bank does not achieve fifty percent cover within two months after grading or at any time thereafter, then Newdunn shall apply an annual seed mixture of non-invasives until fifty percent cover of native herbaceous vegetation is achieved. Further, Newdunn shall apply a wetland seed mixture in the areas that remain devoid of herbaceous wetland vegetation after the first monitoring period. All plantings will be completed no later than March 2006. If suitable numbers of local planting stock are not available, Corps and VDEQ will be contacted to approve any substitutions. Wetland seed mixes and seed mixes used for control of soil erosion or to stabilize disturbed areas anywhere in the vicinity of the mitigation site shall be free of tall fescue, Bermuda grass, and other allelopathic turf grass species, as well as plant species on the Virginia Department of Conservation and Recreation's Invasive Alien Plant List.

#### 4) Performance Standards:

Regarding herbaceous vegetation, the site shall have no less than 70% aerial coverage by the end of the first full growing season after final soil manipulation is performed. The site shall have no less than 80% aerial coverage after the second growing season and no less than 90% aerial coverage after the third season. Aerial coverage will be determined in a manner consistent with methods outlined in the Corps of Engineers Wetland Delineation Manual (1987 & subsequent guidance).

Regarding woody vegetation, the site shall have no less than 400 woody stems per acre average after the second and third growing seasons. The mortality of planted stock will be estimated for each required report. Survivorship of woody vegetation planted stock will only count if it has survived onsite for a minimum of 6 months. Remedial planting will be required if a minimum average woody stem count of 400/acre is not achieved in the sample plots across the site in any monitoring year until the canopy cover is thirty percent (30%) or greater. In the event that remedial planting is required, species which experienced high mortality in the initial planting will not be used.

Regarding wetland vegetation, the site shall meet the basic vegetation parameter for wetlands in accordance with the Corps of Engineers Wetland Delineation Manual (1987 & subsequent guidance) every year or remedial actions may be required.

Regarding wetland hydrology, shallow ground water wells will be installed at the rate of one well per two acres at locations that are representative of the site and which are acceptable to the Corps and VDEQ. In addition, three reference wells will be established in adjacent undisturbed wetland areas. Groundwater wells will be constructed with slotted PVC pipe and installed with sand backfill. The borehole will be capped at the surface with clay in a manner to prevent surface water from running into the well. Wells will be constructed and installed in accordance

with <http://www.wes.army.mil/el/wrtc/wrp/tnotes/hvia3-1.pdf>. Wells will be located by survey both horizontally and vertically, and a spot elevation will be identified adjacent to each well.

This information will be provided on a map of the site and the map included in the year one report. The site shall meet the basic wetland hydrology parameter as established in Corps of Engineers Wetland Delineation Manual (1987 & subsequent guidance) (water within 12 inches of the surface for no less than 12.5% of the growing season during a normal rainfall year). An inconclusive finding, not a failure to meet performance standards, will result if water is NOT within 12 inches of the surface (as described in the sentence above) during a BELOW normal rainfall year.

The Corps, DEQ or Newdunn may, at any time during the monitoring period, require removal, treatment or management of undesirable plant or animal species, including physical removal, use of herbicides, trapping, confining wires or nets, etc. Herbicide applications must be conducted in accordance with all State/Federal application laws and regulations and approved by the Corps/DEQ. In the event morning glory (*Ipomoea spp.*) becomes established in any portion of the wetland restoration area where it covers a contiguous area of more than 10,000 square feet or where it covers, cumulatively more than 55,000 square feet of the entire wetland restoration area and it prevents underlying living native plant species from achieving 50 percent aerial cover of the immediate infestation area, Newdunn shall implement a Corps-approved program to eliminate morning glory in each of these areas before a determination can be made regarding whether those same areas meet the wetland vegetation parameter.

#### 5) Reporting:

Reports will be prepared toward the end of the growing seasons in years one, two, three, five, seven and ten and will be submitted to the Corps and VDEQ by December 31<sup>st</sup> of those years. Unless all performance standards are met during the monitoring period of a "drier than typical rainfall year", conclusive findings regarding whether the performance standards have been met for a particular year can only be made if rainfall during that year's monitoring period is considered to be that of a "typical rainfall year". A "typical rainfall year" is generally interpreted by the Corps as one in which the monthly rainfall amounts for January through the groundwater monitoring period are within the 30<sup>th</sup> and 70<sup>th</sup> percentile of the closest long-term climatological monitoring station (in this case, Langley Air Force Base - <ftp://ftp.wcc.nrcs.usda.gov/support/climate/wetlands/va/51650.txt>). The Corps also considers how these monthly rainfall amounts are delivered, and "event-driven" (e.g., unusually large storm events) months are generally not considered to be "typical". The basis for these reports will be standard wetland delineation data sheets prepared at each of the well sites. In the event that the performance standards are not met at the end of the 10-year reporting period, reporting will continue until standards are met in two successive years. At the minimum reports will include:

- Well data taken at least weekly from 2 weeks prior to the onset of the growing season to 45 days after the onset of the growing season.
- A hydrograph for each well reflecting the well data.
- Rainfall data from the site.
- Vegetation data necessary to assess performance standards. Vegetation sampling will be conducted in the summer.

- Wetland delineation data sheets from each sample site.
- Photos from each of the well sites showing general site conditions, taken in the same orientation from year to year.
- A map or narrative explanation addressing areas that met or did not meet performance standards.

With just cause, Newdunn may request after the second report is delivered to regulators, that reporting requirements be reduced or eliminated. An example of cause might be: if the site clearly meets with the wetland hydrology parameter even during periods of below average rainfall during and preceding the evaluation period.

#### 6) Remediation:

In the event that wetland restoration standards are not met in any given year with typical rainfall, Newdunn will prepare and submit a remediation plan within 60 days of notification of a deficiency by the Corps and DEQ. The plan will be reviewed and approved by the agencies. Newdunn will implement that plan as soon as possible (not to exceed 60 days following approval by the agencies).

#### 7) Final Assurances:

Newdunn will post a letter of credit in the amount of \$200,000.00 U.S., in favor of the United States and/or the Commonwealth of Virginia until completion of the planting of woody stems and/or wetland seed mix per item 3 of section 8, below. After completion of planting, Newdunn will post a letter of credit in the amount of \$10,000.00 U.S., in favor of the United States and/or the Commonwealth of Virginia until woody vegetation has achieved the performance standards set forth in section 4, above, for three consecutive years. The Corps and/or VDEQ may call this letter of credit after providing written notice to Newdunn that they are not in compliance with the wetland restoration plan or failed to meet performance standards, and after giving Newdunn reasonable time (not to exceed 60 days) to correct the defect. The letters of credit shall only be called upon to the extent necessary to fulfill any wetland restoration or performance standard not completed by Newdunn.

#### 8) Schedule:

Task:	Date:
1. Soils returned to ditch; deep chisel plowing and disking completed; lime and fertilizer application; recreate pit-mound microtopography	Earliest suitable soil conditions, no later than December 1, 2005
2. Installation of ground water wells	February 1, 2006
3. Planting of woody stems and or wetland seed mix	February 1 – April 30, 2006
4. First monitoring report due	December 1, 2006

VIRGINIA: In the Clerk's office of the Circuit Court for the City of Newport News, the 8 day of August, 2005. This Deed was presented with the certificate annexed, and admitted to record at 3:44 o'clock P.M. I hereby certify that the tax imposed by Section 58-54.1 in the amount of \$ 9 has been paid.

Test: MICHAEL A. DAVIS, Clerk

By [Signature]

*This Document Prepared By:*  
*David, Kamp & Frank, L.L.C.*  
*739 Thimble Shoals Boulevard, Suite 105*  
*Newport News, VA 23606*

*After Recording Return to:*  
*City Of Newport News*  
*2400 Washington Ave.*  
*Newport News, VA 23607*

**Tax Parcel No.:** A portion of 065 00 01 19

**THIS TRANSACTION IS EXEMPT FROM GRANTOR'S TAXES  
PURSUANT TO SECTION 58.1-811(A)(3) OF THE CODE OF VIRGINIA  
1950, AS AMENDED.**

**DEED**

**Consideration: \$950,000.00**

**THIS DEED**, made this 22<sup>nd</sup> day of February, 2012, by and between **NEWDUNN ASSOCIATES, L.L.P.** (successor-in-interest to Newdunn Associates, a Virginia joint venture), a Virginia limited liability partnership, whose mailing address is 500 East Main Street, Suite 1424, Norfolk, Virginia 23510, Grantor, and the **CITY OF NEWPORT NEWS, VIRGINIA**, a municipal corporation organized and existing under the laws of the Commonwealth of Virginia, Grantee, whose mailing address is c/o City Attorney, City Hall, 2400 Washington Avenue, Newport News, Virginia 23607.

**WITNESSETH:** That for and in consideration of the sum of TEN DOLLARS (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant and convey, with SPECIAL WARRANTY OF TITLE, unto City, its successors and assigns, in fee simple absolute, the following described property, to-wit:

All that certain, lot, piece of parcel of land situate, lying and being in the City of Newport News, Virginia, containing 37 acres, more or less, identified as Parcel D



on that certain subdivision plat entitled, "Subdivision Plat Newdunn Associates, L.L.P. prepared by Hoggard-Eure Associates, P.C." dated October 5, 2011, recorded in the Clerk's Office of the City of Newport News, Virginia, as Instrument No. 120002838 on February 21, 2012.

Together with all and singular the buildings and improvements thereon, rights and privileges, tenements, hereditaments, easements and appurtenances unto the said land belonging or in anywise appertaining.

Being the same property conveyed to Newdunn Associates, a Virginia joint venture, from Newjeff Corp. by Deed dated January 24, 1977, and duly recorded on February 15, 1977 in the Clerk's Office aforesaid in Deed Book 944, page 563, said Deed being corrected by Deed of Correction dated January 24, 1977, and duly recorded on February 17, 1977 in the Clerk's Office aforesaid, in Deed book 945, page 78.

Newdunn Associates, a Virginia joint venture, was a Virginia general partnership which was converted to Newdunn Associates, L.L.P., a Virginia limited liability partnership, pursuant to § 50-73.11:3, Code of Virginia, 1950, as amended, on August 11, 1997, on which date the State Corporation Commission of Virginia issued a Statement of Registration in the name of Newdunn Associates, L.L.P. § 50.73.11:4 provides, inter alia, as follows:

B. When such conversion takes effect:

1. The title to real estate and other property owned by the converting general partnership remains vested in the converted limited partnership;

TO HAVE AND TO HOLD the said property unto the City, its successors and assigns in fee simple absolute.

WITNESS the following signatures and seals:

NEWDUNN ASSOCIATES, L.L.P., a  
Virginia limited liability partnership

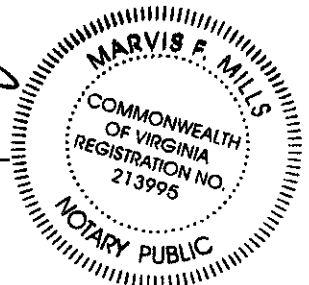
By: [Signature] (SEAL)  
James M. Caplan, Manager

By: [Signature] (SEAL)  
Lawrence Fleder, Manager

COMMONWEALTH OF VIRGINIA  
City of Dorchester, to wit:

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of February, 2012,  
by James M. Caplan and Lawrence Fleder, Managers of Newdunn Associates, L.L.P., a Virginia  
limited liability partnership, on behalf of said partnership.

[Signature]  
Notary Public  
Registration No.: 213995



ACCEPTED BY: [Signature]  
Neil A. Morgan, City Manager

ATTESTED:  
[Signature]  
City Clerk

APPROVED AS TO FORM:  
[Signature]  
Deputy City Attorney

120005657

APPENDIX C

Prepared by and Return to:

City Attorney's Office  
2400 Washington Ave.  
Newport News, VA 23607  
(757) 926-8416

Tax ID No. 064000105

Exempted from recordation tax  
Under Virginia Code Sections  
58.1-811 (A) (3), 58.1-811 (D)

DECLARATION OF RESTRICTIONS

OF

CITY OF NEWPORT NEWS, VIRGINIA

THIS DECLARATION OF RESTRICTION COVENANTS, is made this 27<sup>th</sup> day of March, 2012, by the City of Newport News, Owner.

WHEREAS, the City of Newport News ("the City") is the owner of property ("the Property") known as 13141 Jefferson Avenue, Tax Map ID number 064000108, it being a part of the same property conveyed to the City by deed from Robert E. Hawkins, Jane D. Hawkins, Neal J. Patten, Betty J. Patten, C. Earle Williams, Jr., Virginia H. Williams, Donald N. Patten, Martha H. Patten, William H. Thumel, Jr., and Stephanie C. Thumel, dated October 31, 1988, and duly recorded in the Clerk's Office of the Circuit Court of the City of Newport News in Deed Book 1188, at page 994.

WHEREAS, the City desires to impose on said Property restrictive covenants expressing the City's intent to preserve 5.39 acres of the Property as shown on that certain plat entitled "Plat of Property Subject to Declaration Restrictions, 13141 Jefferson Avenue, 234,596.32 Sq. Ft. 5.30 Ac., City of Newport News, VA", dated March 6, 2012, prepared by the City of Newport News ("the Plat"), which is attached as Exhibit A, in perpetuity in its natural state as detailed below. These covenants are imposed by Owner freely and voluntarily.

NOW THEREFORE THIS DECLARATION WITNESSETH: the City does hereby declare, covenant and agree, for itself and its successors and assigns, that said portion of the Property described as on Exhibit A shall be hereafter held, leased, transferred, and sold subject to the following conditions and restrictions which shall run with the land and be binding on all parties and persons claiming under them.

### **Covenants and Restrictions.**

The Property described as the property subject to the declaration of restrictions shown on Exhibit A attached hereto shall be preserved in perpetuity in its natural state, by prohibiting the following activities:

1. Destruction or alteration of the preservation area shown on Exhibit A other than those alterations authorized by the Norfolk District, U.S. Army Corps of Engineers (USACE) and/or the Virginia Department of Environmental Quality (DEQ);
2. Construction, maintenance or placement of any structures or fills including but not limited to buildings, mobile homes, fences, signs other than those which currently exist. However, boardwalks, wildlife management structures, observation decks, one informative sign, and unpaved foot trails may be placed within the preservation area provided that any such structure permits the natural movement of water and preserves the natural contour of the ground and subject to prior written approval by the USACE;
3. Ditching, land clearing or discharge of dredge or fill material, including diking, damming, filling, excavating, grading, plowing, flooding/ponding, draining, mining, drilling, placing of trash and yard debris or removing/adding topsoil, sand, or other materials, except as may be necessary on a case-by-case basis with prior written approval by USACE;
4. Cultivating, harvesting, cutting, logging, planting, and pruning of trees and plants, or using fertilizers and spraying with biocides, except as may be necessary on a case-by-case basis with prior approval by USACE;

### **Amendment**

The covenants contained herein shall not hereafter be altered in any respect without the express written approval and consent of the Owner or its successor in interest and the USACE and DEQ. The Owner or its successor may apply to the USACE and DEQ for vacation or modification of this declaration; however, after recording, these restrictive covenants may only be amended or vacated by a recorded document signed by the USACE and DEQ and the Owner or its successor in interest.

### **Compliance Inspections and Enforcement**

The USACE, DEQ, and its authorized agents shall have the right to enter and go upon the Property to inspect the Property and take actions necessary to verify compliance with these restrictive covenants. The restrictive covenants herein shall be enforceable by

any proceeding at law or in equity or administrative proceeding by the USACE or DEQ. Failure by any agency (or owner) to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

**Severability Provision**

The provisions hereof shall be deemed individual and severable and the invalidity or partial invalidity or unenforceability of any one provision or any portion thereof shall not affect the validity or enforceability of any other provision thereof.

WITNESS the following signature the day and year first above written.

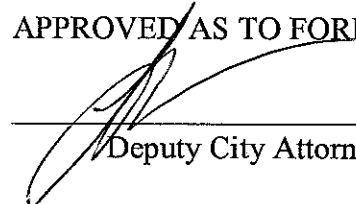
CITY OF NEWPORT NEWS

BY:   
City Manager

ATTEST:

  
City Clerk

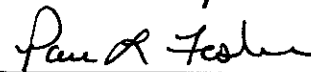
APPROVED AS TO FORM:

  
Deputy City Attorney

Commonwealth of Virginia  
City of Newport News, to wit:

I, Pamela L. Foshee, a Notary Public in and for the City and Commonwealth aforesaid, whose commission expires on the 31<sup>ST</sup> day of August, 2014, do hereby certify that the CITY OF NEWPORT NEWS, by its City Manager, and attested by its City Clerk, whose names are signed to the foregoing document, have each acknowledged the same before me in my city and Commonwealth aforesaid.

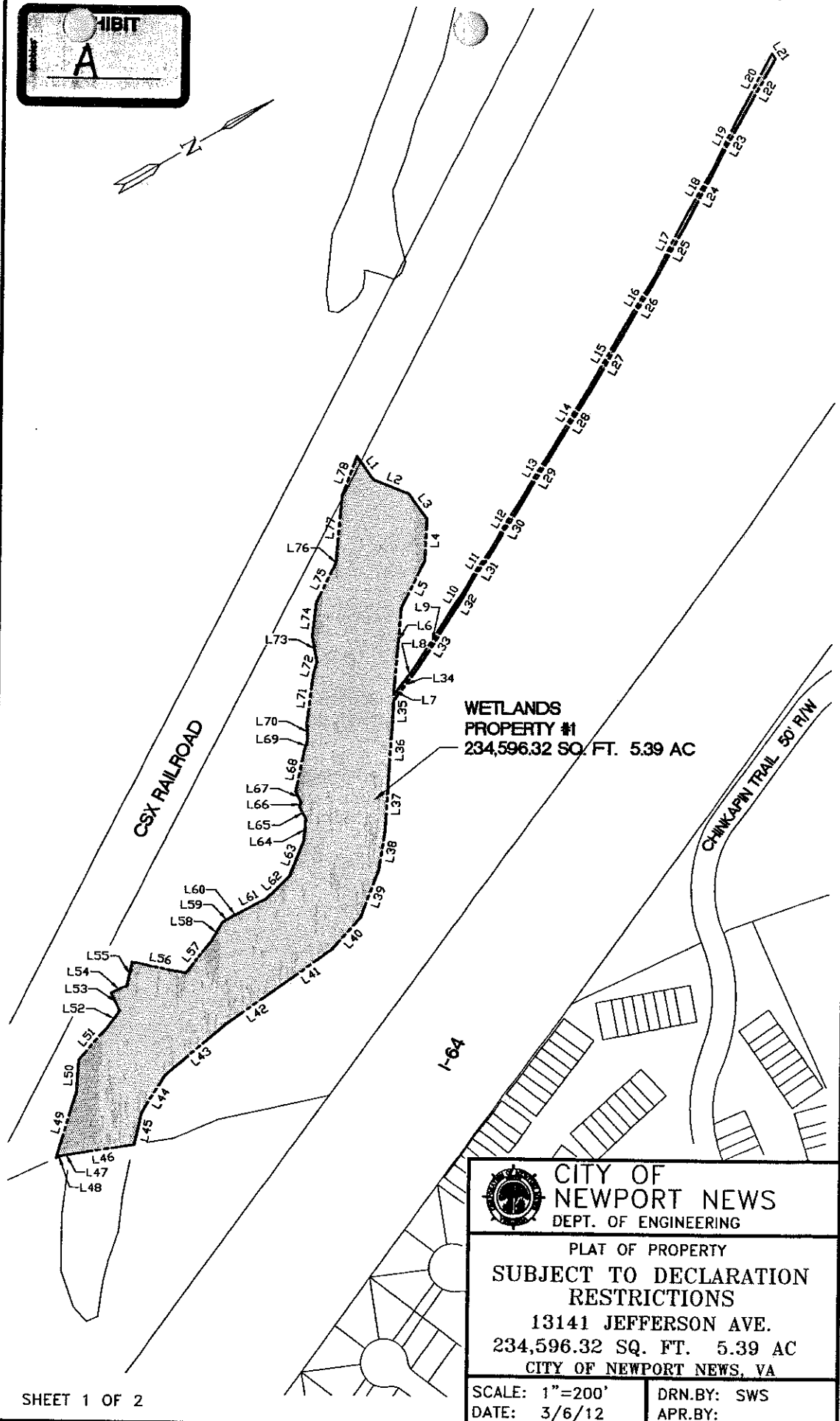
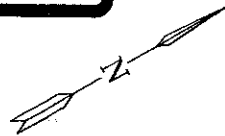
Given under my hand this 3<sup>rd</sup> day of April, 2012.

  
Notary Public

My commission expires 8-31-2014

Registration No. 299515

sdm10620



SHEET 1 OF 2



CITY OF  
NEWPORT NEWS  
DEPT. OF ENGINEERING

PLAT OF PROPERTY  
SUBJECT TO DECLARATION  
RESTRICTIONS

13141 JEFFERSON AVE.  
234,596.32 SQ. FT. 5.39 AC  
CITY OF NEWPORT NEWS, VA

SCALE: 1"=200'  
DATE: 3/6/12

DRN.BY: SWS  
APR.BY:


Parcel Line Table		
Line #	Length	Direction
L1	54.77'	N83° 15' 32"E
L2	71.14'	N51° 14' 33"E
L3	58.57'	N83° 09' 22"E
L4	79.94'	S57° 47' 07"E
L5	99.34'	S33° 59' 59"E
L6	149.54'	S55° 28' 31"E
L7	15.50'	S57° 52' 20"E
L8	67.61'	N23° 39' 47"W
L9	116.14'	N27° 50' 20"W
L10	69.40'	N28° 34' 39"W
L11	80.81'	N27° 27' 46"W
L12	107.77'	N29° 15' 05"W
L13	117.21'	N29° 09' 06"W
L14	127.98'	N29° 32' 20"W
L15	130.57'	N31° 02' 46"W
L16	116.16'	N29° 23' 02"W
L17	126.55'	N33° 15' 23"W
L18	105.41'	N30° 29' 08"W
L19	114.00'	N33° 59' 14"W
L20	127.66'	N32° 49' 03"W

Parcel Line Table		
Line #	Length	Direction
L41	123.97'	S05° 59' 37"E
L42	121.74'	S05° 50' 17"E
L43	147.29'	S10° 54' 55"E
L44	84.55'	S28° 27' 03"E
L45	61.96'	S47° 04' 05"E
L46	119.71'	S20° 37' 56"W
L47	16.69'	S20° 37' 56"W
L48	11.91'	S05° 07' 56"W
L49	129.97'	N43° 33' 40"W
L50	62.33'	N56° 11' 15"W
L51	82.49'	N19° 18' 06"W
L52	38.75'	N23° 41' 20"W
L53	37.64'	N88° 24' 22"W
L54	33.03'	N06° 09' 41"E
L55	45.98'	N48° 43' 11"W
L56	102.07'	N41° 09' 04"E
L57	74.45'	N21° 33' 21"W
L58	43.20'	N30° 51' 22"W
L59	19.54'	N02° 51' 19"W
L60	18.09'	N02° 27' 11"E

Parcel Line Table		
Line #	Length	Direction
L21	12.27'	N85° 09' 30"E
L22	123.02'	S31° 07' 07"E
L23	113.40'	S32° 20' 14"E
L24	103.82'	S32° 39' 34"E
L25	127.92'	S31° 35' 20"E
L26	117.11'	S30° 19' 00"E
L27	131.99'	S30° 43' 07"E
L28	124.00'	S29° 22' 02"E
L29	119.32'	S29° 09' 57"E
L30	106.17'	S29° 05' 38"E
L31	79.83'	S27° 22' 13"E
L32	70.94'	S29° 27' 49"E
L33	116.75'	S27° 57' 09"E
L34	77.87'	S24° 12' 15"E
L35	38.37'	S57° 52' 20"E
L36	106.78'	S56° 33' 51"E
L37	99.20'	S57° 05' 00"E
L38	77.68'	S51° 16' 47"E
L39	94.60'	S39° 18' 54"E
L40	81.02'	S18° 38' 35"E

Parcel Line Table		
Line #	Length	Direction
L61	56.42'	N01° 08' 27"E
L62	60.82'	N14° 23' 18"W
L63	72.03'	N38° 47' 05"W
L64	41.89'	N55° 25' 14"W
L65	24.98'	N89° 20' 23"W
L66	9.29'	N41° 47' 45"W
L67	23.05'	N87° 54' 29"W
L68	78.02'	N48° 35' 19"W
L69	20.66'	N42° 05' 39"W
L70	32.97'	N62° 50' 33"W
L71	92.98'	N53° 19' 48"W
L72	25.67'	N44° 16' 57"W
L73	49.88'	N70° 32' 56"W
L74	63.94'	N53° 39' 03"W
L75	81.56'	N34° 13' 14"W
L76	4.79'	N52° 31' 56"W
L77	123.83'	N55° 05' 43"W
L78	79.92'	N40° 10' 56"W

120005657  
 REC'D  
 2012 APR -3 PM 3:12



**CITY OF  
NEWPORT NEWS**  
DEPT. OF ENGINEERING

PLAT OF PROPERTY  
 SUBJECT TO DECLARATION  
 RESTRICTIONS  
 13141 JEFFERSON AVE.  
 234,596.32 SQ. FT. 5.39 AC  
 CITY OF NEWPORT NEWS, VA

SCALE: 1"=200'  
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DRN.BY: SWS  
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